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## CO-OWNERSHIP OF REAL ESTATE

### Two Types of Co-Ownership

The two major forms of co-ownership of real estate are joint tenancy and tenancy-in-common. Both forms of co-ownership allow for simultaneous rights to possession of the whole of the property. However, there is an important distinction and consequence of each, particularly upon the death of a co-owner.

### What is a Joint Tenancy?

A joint tenant does not hold a specific share in the jointly owned property. Rather, each joint tenant shares a right to the whole of the property that is indistinguishable from his/her other joint tenant(s) (ie. an interest of a joint tenant is not differentiated into a distinct allocated share).

This means that a joint tenant is entitled to a right of survivorship upon the death of any one or more of the other joint tenants. In such a case, the remaining joint tenant(s) will automatically be entitled to an undivided share of the whole of the property. Because the interest of a deceased joint tenant is extinguished at the moment of death, any attempted disposition of the deceased joint tenant's interest through his/her Will is ineffective. In addition, the heirs of a deceased joint tenant will have no claim to the interest formerly held in joint tenancy by the deceased.

The most common form of joint tenancy is between husband and wife. However, even if you are married, you should check the Certificate of Title to any property you own, as your property may be held as tenants in common.

### What is a Tenancy in Common?

Although both tenants in common and joint tenants share undivided possession of the whole of the property, unlike joint tenants, tenants in common have a separate and distinct share.

No right of survivorship exists between tenants in common, as each tenant in common holds a separate and distinct share from the other tenant(s)-in-common. Accordingly, their separate interests will pass through their Wills to their respective Estates upon their deaths.

An example of when the appropriate type of co-ownership would be tenants in common is where business partners purchase property for the purpose of their joint business activities.

[www.butlers.com.au](http://www.butlers.com.au)

Email: [legal@butlers.com.au](mailto:legal@butlers.com.au)

**All mail to:**  
PO Box 460  
Nedlands WA 6909

**Nedlands** (Head Office)  
83-85 Stirling Hwy  
Nedlands  
WESTERN AUSTRALIA

**Fremantle**  
3/18 Parry Street  
Fremantle  
WESTERN AUSTRALIA

**Bunbury**  
119 Beach Road  
Bunbury  
WESTERN AUSTRALIA

**Visiting** Asia incl. China,  
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Associated firm  
**Malaysia**  
Jerald Gomez & Associates  
Penthouse, D2-U6, Solaris Dutamas  
1 Jalan Dutamas  
50480 Kuala Lumpur  
MALAYSIA

Telephone calls  
answered 24 hours  
Telephone: (08) 9386 5200  
Country calls: 1800 675 200  
International: 618 9386 5200  
Facsimile: (08) 9386 4650  
International  
Facsimile: 618 9386 4650

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## **Changing Co-Ownership**

It is a relatively simple exercise to change a tenancy-in-common to a joint tenancy or a joint tenancy to a tenancy-in-common. In both cases, a Transfer of Land signed by all interested parties will need to be prepared, stating that you now wish for the property to be held as joint tenants or alternatively as tenants-in-common.

A registration fee of \$85.00 will be payable upon lodgment of the Transfer at Landgate (formerly the Department of Land Information) and there is only nominal stamp duty payable on a property transfer of this type.

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